RSA 200/2000
BEFORE
THE HON'BLE MR. JUSTICE A.K. GOSWAMI
JUDGMENT AND ORDER(ORAL)

This appeal has arisen out of the judgment and decree dated 29.9.2000, passed by the learned Civil Judge (Senior Division) Morigaon, in Title Appeal No. 15 of 1999 affirming the judgment and decree dated 29.6.1996 passed by the learned Munsiff No.1, Marigaon in Title Suit No.56 of 1993.

2. By reason of the impugned judgments and decrees, the plaintiff's suit for right, title and interest and recovery of khas possession in terms of the prayer made in the plaint was decreed. The second appeal before this Court was admitted on the following substantial questions of law -

1. Whether the vendor of the plaintiff had the saleable right over the suit land?

1. Whether the defendant/appellant's right are protected as provided under Section 41 of the Transfer of Property Act?

2. Whether the land under the Tribal Belt once can be transferred by registered deed of sale?

3. I have heard Mr. A.C. Sarma ,learned counsel appearing for the appellant and Mr. N. Choudhury, learned counsel appearing for the respondent Nos.1,2 and 3.

4. In all fairness to Mr. Sarma, it needs to be placed on record at the very outset that having regard to the materials appearing in the record, he does not press substantial questions of law formulated under point Nos.1 and 3. Therefore, the instant appeal survives with regard to the substantial question of law formulated under point No.2.

5. The plaintiffs filed the suit praying for declaration of right, title and interest in respect of schedule- Ka and khas possession in respect of Schedule- Kha to the plaint. Schedule- Ka measures 2 Kathas of land out of 3 Bigha Kathas 14 Lechas covered by Dag No.557 of Periodic Patta No.290 of Nakhota grant in Gova Mouza in the erstwhile district of Nagaon. Recovery of Khas possession was also sought for by ejecting the defendants from Schedule- Ka which formed an area of land measuring 1 Katha out of Schedule- Kha land from where the plaintiffs were dispossessed. Confirmation of possession of the balance 1 Katha of land out of Schedule- Ka land, as described in Schedule- Ga was also prayed for. Consequently, reliefs in the form of permanent injunction restraining the defendants from causing any hindrance in respect of the plaintiffs' possession also formed part of the prayers in the plaint. The aforesaid suit was filed in the Court of the learned Munsiff, Morigaon, wherein the same was registered as Title Suit No.1 of 1987.

6. The plaintiffs stated that the suit land measuring 2 Kathas is the joint family's property of the plaintiffs. The plaint case is that one Mangal Singh Das was the owner in possession in respect of a plot of land measuring 1 Bigha, which formed a part of land measuring 3 Bighas 4 Kathas and 14 Lechas of land. The suit land was part of the land forming 1 Bigha of land owned by Mangal Singh. Mangal Singh died leaving behind his wife, Rezia Das and daughter, Durgi Das as his only successors-in-interest. On the death of Mangal Singh Das, names of Rezia and Durgi were mutated in the land records. On the death of Rezia, which was about five (5) years from the time Mangal Singh Das expired, Durgi Das became the

sole owner of the properties owned by Mangal Singh. The plaintiffs claim that by the registered sale deed dated 1.6.79, the land measuring 2 Kathas along with Assam Type houses standing thereon were sold to the plaintiffs by Durgi on consideration amount of Rs.8,000/- and possession was also delivered to the plaintiffs. The plaintiffs' craft is that of goldsmith and they started living there in the suit property and some portion was also let out to one Santosh Sarkar. Subsequently, mutation was obtained by the plaintiffs on 29.9.1983 along with others whose name appeared in the patta comprising 3 Bigha 2 Kathas of land. While they were enjoying peaceful possession of the suit land, it has been averred in the plaint that on 10.5.1984, the principal defendant Nos.1 and 2 along with other principle defendants, forcibly evicted the plaintiffs from the Kha Schedule land by demolition of their house standing thereon. In connection with such forceful dispossession, the plaintiffs instituted C.R. Case No.316/84 in the Court of Judicial Magistrate in Morigaon which resulted in conviction of all the principle defendants. It is also stated that the principle-defendants have no manner of right over the suit land and the plaintiffs are apprehensive that the defendants with their man power would dispossess the plaintiffs from the land which is still under their occupation. The overt action of the defendants have also clouded the right, title and interest of the plaintiffs over the suit land as a whole and it is on these broad facts, the suit came to be filed.

7. The principle defendants contested the suit by filing written statement. Before proceeding further it would be relevant to state that the present appeal is preferred by Sri Deba Kanta Bhuyan who was arrayed as the defendant No.2 in the Title Suit and the rest of the defendants have not preferred any appeal against the judgments and decrees impugned in this appeal.

8. The defendants had, besides raising plea of non-maintainability of the suit on the ground of non-joinder of parties and because of the suit land falling in the Tribal Belt within the meaning of Chapter X of the Assam Land and Revenue Regulation, 1886, substantially projected a case to the effect that Rezia Das was not the wife of the Mangal Singh Das and Durgi Das was also not his daughter. Durgi Das had no title or possession over the suit land. Besides, the plaintiffs are Bangladeshi Nationals and not permanent residents of the Tribal Belt. The forceful dispossession was also denied as also the factum of sale by Durgi Das by the registered deed of sale dated 1.6.1979. The defendants further stated that the father of the plaintiffs, namely, Khitish Chandra Ray, was a tenant under the defendant No.1 and there was some dispute in relation to payment of rent which prompted Khitish Chandra Ray to institute the present suit through his son by creating a false and collusive deed. While dismissing that Durgi Das had no claim whatsoever over the land in question, it was also, side by side, stated that even if it is assumed that Durgi Das had some right, no saleable right remained with her inasmuch as she had already transferred by way of registered deeds of sale, land in favour of Deba Kanta Bhuyan, Maharaj Sarma, Debajyoti and defendant No.1 to the extent of 1 Katha, 2 Kathas, 1 Katha, 1 Katha, respectively. It was further pleaded that the sale deed and mutation are illegal and void under provision of Section 23 of the Contract Act, 1872.

9. 9 issues were framed on the basis of the pleadings and issue No.6 relates to as to whether the plaintiffs have right, title and interest over the suit land. During trial, the plaintiffs examined three (3) witnesses and the defendants examined four (4) witnesses.

10. Both the Courts have concurrently held that the plaintiffs are entitled to relief as prayed for in the suit and accordingly, have decreed the same.

11. Mr. A.C. Sarma, learned counsel for the appellant submits that the appellant had purchased vide Exhibit-Kha, a registered sale deed dated 21.8.1981, a plot of land measuring 1 Katha 7 Lechas of land from Sukura Das. Sukura was arrayed as defendant No.1 and he has been examined as DW-2. Mr. Sarma has submitted t

hat the appellant is clearly protected in terms of Section 41 of the Transfer of Property Act, 1882. He submits that the appellant had also purchased land on 5.6.1973 by means of a registered deed of sale, exhibited as Exhibit-Ga, a plot of land from the same patta from Sukura, Rezia and Durgi, being the vendors. Therefore, he submits that the registered sale deed dated 1.6.1979 by which land was sold by Durgi was clearly invalid, Sukura being not the vendor in the said sale deed. It is also contended by Mr. Sarma that the plaintiffs led no evidence to show that the Sukura had no right over the land in question. The Exhibit-Ka, Jama bandi, according to Mr. Sarma, also reflected the name of Sukura and therefore, there was no occasion for him to harbour any apprehension that Sukura had no saleable right in the land in question. He being the bonafide purchaser of the land, the principle evolved under Section 41 of the Transfer of Property Act, 1882 is squarely applicable in the facts and circumstances of the case. He also submits that the appellant continues to remain in possession of land. It is also submitted that both the Courts below have failed to consider these aspects of the matter in the correct perspective and therefore, the impugned judgments and decrees are vitiated.

12. Mr. N. Choudhury, learned counsel appearing for the respondent Nos.1,2 and 3, on the other hand, submits that on the factual matrix of the case, in reality, the substantial question of law formulated under point No.2 does not arise. Neither in the written statement nor in the evidence, such a stand is spelt out to draw an inference by this Court that Section 41 of the Transfer of Property Act, 1882, is applicable in the facts and circumstances of this case. Mr. Choudhury submits that the entire thrust of the defendant was that Rezia was not the wife of Mangal Singh and so also Durgi not a daughter of Mangal Singh. Learned counsel further submits that a look at the evidence of DW-1, who is the appellant, would leave the court satisfied that the defendant No.1 acknowledged, contrary to the stand in the written statement, that Mangal Singh Das was the owner of the land measuring 1 Katha. He, however, submits that whether the same was really 1 Katha is doubtful, having regard to the stand taken by the defendants that he had also purchased some land vide exhibit-Ga in the year 1973. He had admitted in cross-examination that Rezia was the wife of Mangal Singh and she died sometime in the year 1980 and Durgi was the only child of Mangal Singh and Rezia. In view of the evidence of DW-1, it would be clear that he had personal knowledge about the relationship between Rezia, Durgi and Mangal Singh and the reference to Exhibit-Ka, Jamabandi, to suggest that the appellant was led to believe that Sukura had title on the basis thereon is an after thought. It is also contended that when the appellant has set up a plea that Sukura had legitimate right to dispose of the property in question, it was incumbent on the part of the appellant to have adduced evidence to demonstrate how and in what manner Sukura came to be the owner of the plot of land in question. That Sukura was not related to Mangal Singh Das was also borne out by the evidence of DW-1 when he says that he was not aware who the father of Mangal Singh was though he knew the name of the father of Sukura. If at all Sukura had any right, it was his own independent right, which the appellant has miserably failed to trace out. Sukura also did not depose while deposing as DW-2 how or in what way his name came to be mutated in the Jama bandi, Exhibit-Ka. The only evidence that Sukura led was in connection with the tenancy which the defendants had pleaded in the written statement and there also, it was the positive version of Sukura that Khitish was not one of the tenants. Mr. Choudhury has also submitted that the plaintiffs have proved the case by adducing reliable evidence and therefore, this court, in exercise of power under Section 100 CPC may not interfere with the findings of fact, concurrently recorded by both the courts below.

12. I have considered the rivals submissions of the parties and have also perused the materials on records. The stand of the defendant is somewhat ambivalent. Contrary to the stand in the written statement which denounced the fact that Rezia and Durgi are the successors in-interest of Mangal Singh, there was a volte-face in the evidence of DW-1 when he stated that Rezia was the wife of Mangal

Singh and Durgi was their only child. Though it was pleaded that assuming that Durgi had any right over the land in question, she having sold, by way of registered sale deeds, portions of land to some others and consequently, there was no saleable interest left in her, the learned counsel for the appellant had abandoned the plea. I find the contention of Mr. Choudhury to be legitimate in the sense that foundation has to be laid in order to avail the protection under Section 41 of the Transfer and Property Act, 1882. Materials on record do not demonstrate that any such plea was taken and/or canvassed. On the own showing of the appellant, there is no explanation forthcoming as to how the appellant, who had purchased a plot of land from the vendors, namely, Sukura, Rezia and Durgi, he could, vide sale deed dated 21.8.81 (Exhibit-Ka), purchase land from Sukura alone in absence of Durgi. We cannot also ignore the fact that Sukura did not claim any ownership in the plot of land. Even if Sukura is one of the vendors in the sale deed, Exhibit-Ga, the same is not a determining factor, given the materials on record, that the appellant would be entitled to protection under Section 41 of the Transfer and Property Act, 1882. Evidence on record clearly demonstrates that apart from the lack of the plea, even otherwise, there was no material to suggest that the transferee/appellant had taken reasonable care to ascertain that the transferor had power to sell. At any rate, if the vendor, namely, Durgi had saleable right, the plaintiffs' purchase being anterior in point of time, the right, title and interest of the plaintiffs by virtue of the said sale deed dated 1.6.1979, cannot, in any manner, be extinguished by the subsequent sale deed dated 21.8.1981, that too, at the instance of a person who has not brought any evidence to show the legitimacy of the sale in question.

13. In view of the discussion aforesaid, the substantial question of law formulated under point No.2 is answered in the negative and thereby I hold that this appeal is without any merit and accordingly, the same is dismissed. Interim order suspending the judgment and decree of the learned appellate court is vacated.

14. No costs.

15. Lower courts records be transmitted forthwith.